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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA**

In re YELLOWSTONE MOUNTAIN  
CLUB, LLC,

BRIAN A. GLASSER, SUCCESSOR  
TRUSTEE OF THE YELLOWSTONE  
CLUB LIQUIDATING TRUST,

Plaintiff,

vs.

TIMOTHY L. BLIXSETH, CASA 20  
LLC, TAMARINDO, LLC

Defendants.

**Case No. 08-61570-11-RBK**

**Adversary Proceeding: 09-00064**

**No. 2:13-cv-00068**

**DEFENDANTS' POSITION  
REGARDING COURT'S  
CONTINUED JURISDICTION  
AND NOTICE OF FILING  
DOCUMENTS WITH THE  
NINTH CIRCUIT COURT OF  
APPEALS**

Defendant Timothy L. Blixseth, by and through counsel, hereby files his position regarding the Court's continued jurisdiction to act on Mr. Blixseth's petition for immediate release from incarceration and notice of filing certain documents with the Ninth Circuit Court of Appeals.

### **RELEVANT PROCEDURAL BACKGROUND**

On April 20, 2015, this Court ordered Mr. Blixseth to be immediately be "taken into custody by the U.S. Marshals to be incarcerated until such time as he provides and files with the Court and serves upon all parties, an accounting..." Doc. 159 at p. 26.

On April 23, 2015, Mr. Blixseth, through appellate counsel, filed a Petition for Writ of Mandamus with the Ninth Circuit Court of Appeal, No. 15-71251.

On June 4, 2015, Mr. Blixseth filed a declaration that attached an accounting responsive to the Court's April 20<sup>th</sup> Order. Docs. 178-184. Later, on June 4, 2015, the Court directed "[e]ach party in this case shall file a statement of position on or before June 12, 2015, directed to issues related to this Court's jurisdiction to act in this case pending resolution of matters now pending in Appeal No. 15-71251, *In re Timothy L. Blixseth*." Doc. 186 at p. 3.

On June 8, 2015, the Ninth Circuit denied Blixseth's Petition for Writ of Mandamus. *Timothy L. Blixseth v. U.S. District Court for The District of Montana, Butte, et al.*, Appeal No. 15-71251, Doc. 17.

## DEFENDANTS' POSITION

Regardless of the denial of Blixseth's Petition for Writ of Mandamus, the District Court had jurisdiction to act despite Mr. Blixseth filing an extraordinary writ with the Ninth Circuit. *Nascimento v. Dummer*, 508 F.3d 905, 910 (9th Cir. 2007) ("a petition for a writ of mandamus, such petitions for extraordinary writs do not destroy the district court's jurisdiction in the underlying case."); *Ellis v. U.S. District Court*, 360 F.3d 1022, 1023 (9th Cir.2004) (*en banc*) ("[I]n the context of an extraordinary writ such as mandamus, there is no need for us to relinquish our jurisdiction to the district court because it was never deprived of jurisdiction over the underlying case.").

The Defendants, through appellate counsel, filed Documents 117 through 181-26, and 185 with the Ninth Circuit Court of Appeals. Documents 182 through 184 (i.e., Section 24 of the accounting) were previously filed with the Ninth Circuit Court of Appeals at Docs 9 through 12 on May 14, 2015 and the Ninth Circuit instructed Mr. Stillman to not re-file those documents. Stillman Decl. at ¶ 2, which is attached as Exhibit 1.

Date: June 10, 2015

Respectfully submitted

/s/ Michael J. Ferrigno

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### **CERTIFICATE OF SERVICE**

I, Michael J. Ferrigno, hereby certify under penalty of perjury that on the 10th day of June, 2015, copies of the above document were served electronically by ECF notice to all persons/entities requesting special notice or otherwise entitled to same and that in addition, I hereby certify that I have mailed or served the document to the following non-ECF participants in the manner indicated by the non-participant's name:

No manual recipients.

/s/Michael J. Ferrigno

Michael J. Ferrigno